TENNECO OIL COMPANY

IBLA 71-184 Decided August 29, 1972

Appeal from decision of the land office, Riverside, California, holding noncompetitive oil and gas lease Riverside 0540 to have automatically terminated for failure to pay rental on or before the anniversary date of the lease and so rendering moot the question of a purported assignment of the lease after the termination date.

Affirmed.

Oil and Gas Leases: Termination

An oil and gas lease which had terminated automatically for nonpayment of the rental due on or before the anniversary date of the lease will not be held to continue in effect thereafter because of the purported assignment of the lease within the 20 day period set out in 30 U.S.C. § 188 (1970).

Oil and Gas Leases: Termination

Whether or not a purported assignee of a terminated oil and gas lease is a bona fide purchaser within the ambit of 30 U.S.C. § 184 (i)(1970) is a moot question.

Oil and Gas Leases: Bona Fide Purchaser

The purchaser of an assignment of an oil and gas lease is presumed to have knowledge of the date and terms of the lease and its status at the time of the assignment. If he does not, he is put on inquiry.

APPEARANCES: Donald H. Ford, Esq., counsel for appellant.

OPINION BY MR. STUEBING

The subject oil and gas lease, Riverside 0540, was issued effective December 1, 1964, for a primary term of 10 years and so long thereafter as oil or gas is produced in paying quantities, subject, however, to section 2(e) of the lease which provides, among other things, that if there is no well on the leased lands capable of producing oil or gas in paying quantities, failure to

pay rental on or before the anniversary date shall automatically terminate the lease by operation of law. 30 U.S.C. § 188 (1970).

The record shows that on December 1, 1970, there was no well capable of producing oil or gas in paying quantities on the lease, and the rental payment due on December 1, 1970, was not paid on or before that date. On December 11, 1970, appellant purchased a purported assignment of the lease from the lessees, Richard M. Ferguson and Louise Safarik. On December 23, 1970, Richard M. Ferguson's check for the rental payment was received by the Riverside land office. The check was dated and the envelope postmarked December 18, 1971. The land office returned Mr. Ferguson's check the same day it was received with a notice advising that the lease had terminated. Ferguson and Safarik did not appeal, nor did they file a petition for reinstatement.

Subsequently, on January 7, 1971, appellant filed its request for approval of the assignment. The decision of the land office, Riverside, California, dated January 15, 1971, held that as the lease had terminated by operation of law on December 1, 1970, the appellant acquired nothing by way of the lease assignment. Accordingly, it concluded, the question of the approval of the assignment was moot.

Appellant, by check dated February 8, 1971, tendered late rental payment with its notice of appeal, and requested that the rental be accepted and the lease affirmed as valid in appellant's hands. Appellant bases its case upon a contention that it is a bona fide purchaser within the ambit of 30 U.S.C. § 184 (i)(1970) and the 20-day "grace period" for late payments of lease rentals set out in 30 U.S.C. § 188(c) (1970).

First, appellant asserts that the lease was saved from termination because:

> [T]he negotiations for the acquisition of such lease, and the payment of consideration, and the assignment by assignor to assignee, were all completed within the 20-day grace period provided by Public Law 91-245.

Appellant never explains how the 20-day "grace period" relates to assignments, since by its language the Act addresses itself only to allowing the Secretary of the Interior the option of reinstating terminated leases if within 20 days after their anniversary dates the rentals are paid or tendered, and it is shown to the satisfaction of the Secretary that

there was no lack of due diligence on the part of the lessees and no valid leases have been issued affecting any of the lands covered by the terminated leases. 30 U.S.C. § 188 (1970). The section does not provide an additional "grace period" for assignments.

The appellant has made no acceptable showing that the failure to pay the rental on or before the anniversary date was justifiable or not due to lack of reasonable diligence. Therefore, the appellant cannot be given relief under the provisions of section 188(c), supra.

Next, appellant cites 43 CFR 3102.1-2 (1972), which provides that the right to cancel or forfeit an oil and gas lease for any violation of the provisions of the Act of September 2, 1960, shall not apply so as to affect adversely the title or interest of a bona fide purchaser of any lease even though the holding of the person from whom the lease was acquired may have been canceled or forfeited or may have been subject to cancellation or forfeiture for any such violation. Appellant argues that failure to pay rental is a violation of the Act, citing 30 U.S.C. § 188 (1970). How that section aids appellant's case is not made entirely clear. Under the heading of "Cases Construing Definition and Application of Statutory Authority", appellant discusses one case, Southwestern Petroleum Corporation v. Udall, 361 F.2d 650 (1966). That case deals with the problem of defining a bona fide purchaser, and of the rights of the bona fide purchaser versus another aspiring purchaser of an oil and gas lease. However, the bona fide purchaser in Southwestern Petroleum took under a defective but not a terminated lease. Therefore, in Southwestern Petroleum, there was no question of an already terminated, and so unassignable, lease. Regardless of that distinction, appellant could not qualify as a bona fide purchaser under the test set out in appellant's own supporting case, Southwestern Petroleum Corporation, supra, at 656. The definition of a bona fide purchaser, as that term is affected by constructive notice, is set out by the Court as follows:

> * * * There is no specific statute providing for constructive notice of land office records, which are maintained primarily for Departmental use. The bona fide purchaser amendment necessarily contemplates some inquiry be made into the records pertaining to title. Otherwise a premium would be put on negligence and studied ignorance. * * * The use of the land office records for title search must be recognized.

Accordingly, the Court adopts the general "prudent man" test as the standard to be applied in imputing notice on the basis of filed records or materials available to an assignee. In the

present case, to determine if the rental had been paid, appellant's landman had only to check the land office record. Appellant's landman, stated in his affidavit that "in my dealings with Mrs. Safarik and Mr. Ferguson, it is my understanding that the lease in question was in good standing and that the December rental had been paid." (Emphasis added). Appellant does not even assert that it was told by or relied upon statements by the assignors of the lease that the December rental had been paid. That is hardly "ordinary prudence". We hold that appellant had constructive notice of the nonpayment of the rental for the lease and therefore could not qualify as a bona fide purchaser of the lease. An assignee of an oil and gas lease is presumed to have knowledge of its date, the terms of the lease, and its status at the time of the assignment. If he does not, he is put on inquiry. Cf. Minnie E. Wharton, et al., 4 IBLA 287, 79 I.D. (1972).

An oil and gas lease automatically terminates for failure to pay the annual rental when the rental is not received by the anniversary date. Harold Ladd Pierce, A-30341 (June 30, 1965); Duncan Miller, A-31087 (February 4, 1970). In the present case, the lease terminated on December 1, 1970, for failure to pay the rental due. No action on the part of the lessee by way of assignment thereafter could revive the terminated lease, regardless of whether the assignee was a bona fide purchaser.

The question of whether the appellant was or was not a bona fide purchaser is moot, since 30 U.S.C. § 184 (i) has no applicability to a purchase made after the lease has terminated, but, pro arguendo, even if such status could benefit appellant's position, we are obliged to conclude that it can not be regarded as a bona fide purchaser under the facts of this case.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior (211 DM 13.5; 35 F.R. 12081), the decision appealed from is affirmed.

Edward W. Stuebing
Member

We concur:

Frederick Fishman
Member

Martin Ritvo
Member